

### REMARKS

The Office Action mailed May 10, 2011, has been received and its contents carefully noted. Claims 1, 3, 5, 7, 9 and 14 were pending. Claims 1, 3, 5, 7, 9 and 14 were rejected.

This is a supplemental Rule 116 response wherein the rejected claims are cancelled and the remaining claim(s) limited to the subject matter of claim 11, which was indicated to be allowable. Claim 11 is amended to include the subject matters of claims 1 (abbreviated) and 9 upon which it depends. Claim 7 is directed to a cosmetic preparation and is amended to parallel claim 11.

New dependent claims 15 and 16, further limit the allowable subject matter by specifying the zinc oxide incorporation into the oil phase of an o/w emulsion. The working examples clearly support this. The surface modification facilitates the incorporation into the oily phase. New dependent claims 17 and 18 further limit the allowable subject matter by specifying the surface modifying agents as trimethoxyoctylsilane. This agent is clearly supported by the working examples.

On page 27, starting at line 6, "Use examples" section, it is stated "the formulation according to the invention which, in the combination of ZnO (w.c.=coating=tremethoxyoctylsilane), have shown a synergistic effect with either OC= octocrylene, OMC= ethylmethoxycinnamate, PISA = phenylhexylbenzimidazole sulfonic acid or BEMT = Bis-ethylhexyloxy methoxyphenyl triazinebenzimidazole." Tables 4-10 show synergy when both the zinc oxide and one of OC, OMC, PISA, or BEMT are present in the formulation. The SPF values are more than additive. The silane agent effect appears more directed to improved incorporation of the zinc oxide into the oil phase due to the surface modification which results in the formation of a hydrophobic surface. Contrast the SPF value of the oxide alone and the OC (Table 4), OMC (Tables 5, 6), PISA (Tables 7, 8) or BEMT (Tables 9, 10) alone with that of the respective combinations.

Each of the amended claims is clearly drawn to the combination of zinc oxide with one of OC, OMC, PISA, or BEMT.

Some discussions were held with the Examiner relative to procedural issues associated with a supplemental response. Options were discussed, which included a supplemental Rule 116 amendment.

***Rejection under 35 U.S.C. § 103(a)***

Claims 1, 3, 5, 7, 9 and 12-14 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Kerner et al. (US 20020168524) in view of Mitchnick et al. (US 5,486,631), Korth et al. (US 7,186,768) and Katustic (US 7,718,261). Applicants respectfully traverse.

The rejected claims have been cancelled or, in the case of claim 7, amended to include the subject matter of claim 11, found to be free of the rejection as stated.

Reconsideration is respectfully requested.

### CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider the presently outstanding rejection and that it be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefor are hereby authorized to be charged to **Deposit Account No. 02-4300, Attorney Docket No. 032301.443.**

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

By:



Thomas G. Wiseman, Reg. No. 35,046  
1130 Connecticut Ave., N.W., Suite 1130  
Washington, D.C. 20036  
Telephone: (202) 263-4300  
Facsimile: (202) 263-4329

Dated: September 9, 2011